



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

SECNAVINST 4900.45
SO-4

5 December 1984

SECNAV INSTRUCTION 4900.45

Subj: LEASE OF DEPARTMENT OF THE NAVY-CONTROLLED DEFENSE
ARTICLES TO FOREIGN GOVERNMENTS AND INTERNATIONAL
ORGANIZATIONS

Ref: (a) Arms Export Control Act, 22 USC 2751 et seq (NOTAL)
(b) Executive Order 12365 of 24 May 82 (NOTAL)
(c) DOD 5105.38-M of 1 Apr 84 (NOTAL)
(d) Secretary of Defense memo of 29 Apr 83 (NOTAL)
(e) 10 USC 7307 (NOTAL)
(f) SECNAVINST 11420.1 (NOTAL)
(g) DOD 1225.6 of 18 Apr 70 (enclosed in OPNAVINST
4423.3B) (NOTAL)
(h) SECNAVINST 5730.5G (NOTAL)

1. Purpose. To establish policy and procedures for leasing
Department of the Navy (DON)-controlled defense articles to
foreign governments and international organizations.

2. Background

a. Chapter 6 of reference (a) authorizes the President of
the United States to lease Department of Defense articles to an
eligible foreign country or international organization if:

(1) The President determines that there are compelling
foreign policy and national security reasons for providing such
articles on a lease basis rather than on a sales basis;

(2) The President determines that the articles are not
needed for public use at the time; and

(3) The foreign government or international organi-
zation has agreed to pay in United States dollars all costs
incurred by the United States Government in leasing such
articles, including reimbursement for depreciation of such
articles while leased, the costs of restoration or replacement
if the articles are damaged while leased, and the replacement
cost (less any depreciation in the value) if the articles are

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lost or destroyed while leased. This requirement shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects, or to any defense article which has passed three-quarters of its normal service life.

b. Reference (b) delegates to the Secretary of Defense the President's authority under sections 61 and 62(a) of reference (a) to lease defense articles to foreign countries and international organizations and to make reports to the Congress. This authority has been delegated further to the Director, Defense Security Assistance Agency (DSAA).

c. Chapter 12, Section 1 of reference (c) implements reference (a) with regard to the lease of defense articles to foreign governments and international organizations.

d. Reference (d) delegates to the Director, Strategic Systems Project Office the authority to make statutory determinations and enter into leases with the United Kingdom to support the joint US/UK POLARIS/TRIDENT Program, provided the duration of each lease, including extensions, is cumulatively less than one year.

e. Reference (e) requires specific enabling legislation prior to leasing to another nation a naval vessel which displaces more than 3,000 tons or which is less than 20 years of age. Reference (e) allows the lease of other naval vessels only after 30 days of continuous session of Congress have elapsed following appropriate Congressional notification.

f. Lease agreements of defense articles to a foreign government or international organization pursuant to reference (a) for a period of one year or more require advance notification to Congress.

g. Reference (f) establishes additional requirements which pertain to the leasing of DON-controlled floating dry docks.

h. Reference (g) establishes additional requirements which pertain to the leasing of DON-controlled defense articles in the possession of Naval or Marine Corps Reserve Forces.

3. Policy

a. In accordance with policy established in reference (c), the United States Government normally provides defense articles to foreign governments and international organizations by Foreign Military Sales (FMS) under reference (a). There may

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be exceptional instances in which a lease agreement will be the most appropriate method whereby U. S. defense articles can be made available to eligible foreign countries or international organizations.

b. The concurrence of the Assistant Secretary of the Navy (Shipbuilding & Logistics) (ASSTSECNAV(S&L)) shall be obtained prior to initiating action outside the DON that would indicate the availability for lease of any DON-controlled defense article. Likewise, Chapter 12, Section 1 of reference (c) requires the concurrence of the Director, DSAA before a foreign country or international organization is advised that the lease of a defense article is being favorably considered or is an available option.

c. Leases shall be for a fixed period not to exceed five years. Title to leased DON-controlled defense articles shall remain in the U. S. Government.

d. As a matter of policy, the DON will normally seek cash reimbursement for all costs for the lease of defense articles. The final decision to waive any portion of such reimbursement rests with the Director, DSAA. Any recommendation to waive reimbursement may be forwarded to Director, DSAA only with the prior approval of ASSTSECNAV(S&L).

4. Action

a. The Chief of Naval Operations (CNO) shall:

(1) Assign a single office to assume responsibility for the proper preparation, coordination, execution and administration of leases. That office will serve as the central repository for all lease agreements processed in accordance with this and any implementing instructions and will forward a copy of each concluded lease agreement to the Office of the Judge Advocate General (International Law Division).

(2) Issue implementing instructions in amplification of this directive, as necessary.

(3) Obtain the approval of the ASSTSECNAV(S&L) for a proposed lease of a DON-controlled defense article. This shall be accomplished by a memorandum from the CNO, or designee, to the ASSTSECNAV(S&L) enclosing a copy of the proposed lease, a completed depreciation charge work sheet and the proposed determination required by Chapter 12, Section 1 of reference (c).

(4) Forward the proposed lease agreement and the determination noted in 4a(3) to the DSAA in compliance with Chapter

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12, Section 1 of reference (c). The lease agreement will specify the place of redelivery of the defense articles upon expiration or termination of the lease.

(5) Determine and document the value and remaining service life of the defense article prior to the submission of the lease to the ASSTSECNAV(S&L) for approval.

(6) Coordinate requests for specific enabling legislation and Congressional notification for the DON under reference (e). Proposed legislation or Congressional notification shall be provided to the ASSTSECNAV(S&L) and subsequently to DSAA for concurrence before it is forwarded to the Navy Office of Legislative Affairs (OLA) for transmission to the Congress in accordance with reference (h).

(7) For each lease, obtain the concurrence of required offices prior to submission to ASSTSECNAV (S&L); e.g., normally, OP-03, OP-04, OP-090, Navy Judge Advocate General (NAVY JAG) and U.S. Coast Guard for ship leases; Commandant of the Marine Corps for Marine Corps equipment and amphibious ships; and OP-02 for submarines, etc.

(8) Sign the lease on behalf of the U. S. Government. The CNO may redelegate this authority.

(9) Provide the ASSTSECNAV(S&L) with a copy of the quarterly lease report (RCS: DSAA(Q)1146) submitted to DSAA.

b. The Judge Advocate General shall:

(1) Advise the CNO about matters of law and regulation incident to the leasing of DON-controlled defense articles to foreign governments and international organizations.

(2) Review for legal sufficiency all lease documents prior to forwarding the proposed lease and determination to the ASSTSECNAV(S&L).

c. The General Counsel shall be responsible for providing legal services throughout the Department of the Navy and on all matters relating to the lease of defense articles to foreign governments and international organizations.

d. The Comptroller of the Navy (NCB) shall review lease charges and associated cost calculations.

e. The ASSTSECNAV(S&L) shall review and act on the recom-

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mentation of the Chief of Naval Operations or Commandant of the Marine Corps as appropriate regarding the leasing of DON-controlled defense articles.

f. The Assistant Secretary of the Navy (Research, Engineering and Systems) (ASSTSECNAV(R,E&S)) shall review any proposed lease involving the transfer of technology on the Military Review Technology list or the Coordinated Committee (COCOM) list, or requiring a deviation or exception from the National Disclosure Policy. ASSTSECNAV(R,E&S) concurrence must be obtained for any such lease before it is forwarded to ASSTSECNAV(S&L) for action.



James F. Goodrich
Under Secretary of the Navy

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